

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PRE-CAST SPECIALTIES, INC.
Employer

and

Case 12-RC-139665

CONSTRUCTION AND CRAFT WORKERS
LOCAL UNION NO. 1652
Petitioner

ORDER

The Employer's request for special permission to appeal the Regional Director's scheduling of the hearing for January 7, 2015 is granted, and the appeal is granted on the merits.¹ We find that the Regional Director abused her discretion by denying the Employer's unopposed request to postpone the hearing based on a good cause showing of the unavailability of the counsel previously involved as representatives in this proceeding due to commitments predating the order scheduling hearing. We note as well that this was a first-time postponement request and the Petitioner did not oppose postponement. Accordingly, we direct that the hearing be postponed until a date no earlier than January 16 but no later than January 23, 2015.² No further postponement will be granted.

PHILIP A. MISCIMARRA, MEMBER

HARRY I. JOHNSON, III, MEMBER

Dated, Washington, D.C., January 7, 2015

CHAIRMAN PEARCE, dissenting:

Contrary to my colleagues, I would deny the Employer's Special Appeal on the merits. Postelection matters are to be resolved "with the utmost dispatch." See, NLRB Casehandling Manual (Representation Proceedings), Sec. 11365.3. It is well settled that such a postponement will be granted only when good cause is shown. CHM, Secs. 11365.3; see also, Form NLRB-4338 ("unless otherwise specifically ordered, the hearing will be held at the date, hour, and place

¹ We are treating the Employer's "Request for Review or in the Alternative for Special Permission to Appeal" as a request for special permission to appeal the Regional Director's decision to schedule the hearing date for January 7, 2015.

² Based on representations made in the Request for Review, either attorney Doug Sullenberger or Charles S. Caulkins, or both, have no stated alternative commitments precluding their appearance at a hearing beyond January 14, 2015. Absent mutual agreement by the parties on a hearing date, the Regional Director is not limited to rescheduling a hearing on subsequent dates suggested by the Employer.

indicated. Postponements will not be granted unless good and sufficient grounds are shown.”). I find that the Employer did not make this requisite showing.

After the Union won the December 9, 2014 election by a margin of 121 votes for and 61 against representation, the Employer timely filed 10 objections to the election. The Regional Director advised the parties on December 17, 2014 that if a hearing was warranted on the objections it would commence January 5 and continue on consecutive days thereafter. Thus, the parties had prompt notice of the hearing (subsequently set for January 7), and ample opportunity to arrange for representation at it. Not surprisingly, the Employer does not assert that it could not secure counsel for the hearing; indeed, it would be difficult to do so, given that the firm representing it employs 298 attorneys, and would be well able to handle the hearing. Instead, the Employer points to the scheduling conflicts of its two preferred counsels (one of whom is unavailable because of meetings to apportion the law firm’s profits and the other who was unavailable due to preparation and participation in an FMCS proceeding and collective bargaining negotiations).

Further, the Employer proposed alternative dates (January 13, 20, or 23) well after the noticed hearing date, and which did not allow for consecutive dates that a hearing on its 10 objections likely would require. “(Postelection) hearings should be held on consecutive days until completed.” CHM Sec. 11365.3. Nor did the Employer obtain the Union’s agreement to any of these alternate dates; indeed the Union was unavailable on those dates. In these circumstances, I find that the Regional Director acted well within her authority in denying the postponement requests. Authority to grant or deny a request is within the Regional Director’s discretion and her decision will not be reversed absent a showing of abuse of discretion. See *Union Forging Co.*, 118 NLRB 1614, 1614, fn. 2 (1957) (Board affirming hearing officer’s denial of continuance as “within his discretion”); cf. *NLRB v. Glacier Packing Co.*, 507 F.2d 415, 416 (9th Cir. 1974) (authority to grant or deny a continuance in a ULP case is committed to the sound discretion of the ALJ or the Board).

Accordingly, I would deny the Employer’s requests.

MARK GASTON PEARCE, CHAIRMAN

Dated, Washington, D.C., January 7, 2015.